original estimated cost of $6,500 since the engine would have become jammed up. The car had been left outside his workshop after this failure to come to an agreement. Whilst the total loss estimated by the learned arbitrator at $8,000 did not directly arise out of the accident, it certainly arose directly out of their subsequent conduct in not having it repaired elsewhere after the breakdown in repair cost negotiations.

Mr. Ball referred us to *Russell* on Arbitration 18th Edition page 499 Form 43, wherein one of the grounds for setting aside an arbitrator's award is where the award "on the face thereof is bad in law". He then repeated the arguments advanced by the manager of the appellant company viz.

(a) in order to succeed in his claim the respondent had to establish that his motor vehicle suffered loss or damage as a direct result of the accident; and the fair estimate of such damage was a total loss or a sum which the arbitrator had to assess having heard both parties;

(b) there was no evidence before the arbitrator to show that the vehicle was a total loss.

According to him to say that the arbitrator had come to a finding of fact was wrong, because had he done so there would be no total loss and that the learned appellate judge, in his grounds of judgment was merely repeating the error of the arbitrator.

There was evidence that for all practical purposes the car had been totally destroyed, reduced to a heap of junk owing to, as the learned arbitrator found, failure and neglect of the appellants to take reasonable steps to have it repaired elsewhere after the dispute with the repairers over the cost of repairs.

It is plain that although the maximum amount which the insurers can be called upon to pay is the estimated value of the car as stated in the policy, it does not follow that they will always be obliged to pay the whole amount even though the car is completely lost or destroyed (See *Shawcross* on Motor Insurance 2nd Edn. pages 508/509). The learned arbitrator had obviously taken into account depreciation.

We therefore find that there was no mistake in law or in fact of the finding of the learned arbitrator and dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Sault, Keith Sellar & Co.; Nik Hussain, Ibrahim & Abdullah.*

LIM KIT SIANG v. PUBLIC PROSECUTOR

[F.C. (Suffian L.P., Raja Azlan Shah C.J. (Malaya), Lee Hun Hoe C.J. (Borneo), Wan Suleiman & Chang Min Tat F.JJ.) August 6 to 9 & September 14, 1979]

[Kuala Lumpur — Federal Court — Criminal Appeal No. 36 of 1978]

Criminal Law and Procedure — Official Secrets — Receipt of unauthorised secret information — Disclosure of secret information — Duty to reveal source of information — Parliamentary privilege — Disclosure to member of Parliament — Sentence — Official Secrets Act, 1972, ss. 8(1), (2) & 11.

Official Secrets — Receipt of unauthorised official secret information and disclosure thereof — Offence — Official Secrets Act, 1972, ss. 8(1), (2) & 11.

Constitutional Law — Parliamentary privilege — Disclosure of secret information outside Parliament — Official Secrets Act, 1972.

This was an appeal from the conviction of the appellant on five charges under the Official Secrets Act, 1972 for (a) receiving secret official information having reason to believe at the time of the receipt of the information that it was unauthorised; (b) failing to disclose the source of the information; (c) failing to take reasonable care to prevent publication of the information; (d) communicating the information in a speech and (e) divulging the said information in a letter to a news review. The information in question related to tenders in relation to the purchase of fast strike crafts for the Royal Malaysian Navy. The appellant was convicted and sentenced to $5,000 or 1 year imprisonment on the 1st charge; $1,000 or 2 months' imprisonment on the 2nd charge and $3,000 or 9 months' imprisonment on each of the 3rd, 4th and 5th charges (see [1979] 2 M.L.J. 37). The Public Prosecutor cross-appealed on the sentences, contending that they were inadequate.

Held: (1) the function of the court is judicial not legislative and the court ought not to legislate under the guise of exercising its judicial powers and functions. In particular the court has no power to create a right for any person to ignore the provisions of the Official Secrets Ordinance or any other law of the land;

(2) the learned trial judge in this case was correct in holding that the information referred to in the charges was obtained in contravention of the Act;

(3) the duty of the appellant as a Parliamentarian does not include the right to disclose or make available for disclosure secret information outside the walls of the House to the public at large, whatever his motives might be;

(4) the offences in the charges have therefore clearly been committed. Although the offences were of a serious nature, the learned trial judge was right in not imposing a sentence of imprisonment;

(5) no reasons were given by the learned trial judge for the amounts of the fines imposed. In view of the circumstances in this case the fines should be reduced as follows: $1,500 on the 1st charge; $1,000 on the 2nd charge; $1,000 on the 3rd charge; and $1,500 each on the 4th and 5th charges.

Cases referred to:-

(1) *Malone* v. *Metropolitan Police Commissioner* [1979] 2 W.L.R. 700, 725-6.

(2) *R.* v. *Blake* [1961] 3 All E.R. 125.

(3) *Rex* v. *Crisp and Homewood* (1919) 83 J.P. Reports 121.

FEDERAL COURT.

Karpal Singh for the appellant.

Datuk Abu Talib bin Othman, Solicitor-General, (*Mohamed Adnan bin Datuk Shuaib* with him) for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah C.J. (Malaya) (delivering the judgments of the Court): The appellant, who was at all relevant times and still is a Member of Parliament and the Leader of the Opposition, was charged with being in possession of information relating to the Federal Government's purchase of 4 fast-strike craft (FSC) for the use of the Royal Malaysian Navy. The details of this information were alleged in the charges to be the identities of the 4 short-listed tenderers and of the successful tenderer, the original and consolidated prices submitted by the successful tenderer, the mode of payment and the cost of the four FSC, the make of the fire control system and the make and types of engines to be installed in the FSC and the capability of the craft. The information was and is secret.

Arising from the possession of that information, the appellant was in Criminal Trial No. 13/78 charged with receiving such secret official information having reasonable ground to believe that it was communicated to him in contravention of the Official Secrets Act, 1972, (the Act), an offence punishable under section 8(2) of the Act (the first charge).

A second charge was preferred against him under section 11(1)(a)(aa) with failure to disclose the source of that information to a duly authorised police officer above the rank of Inspector when required to do so under the Act.

In Criminal Trial No. 14/78, he faced the amended charge under section 8(1)(iv) of the Act with failing to take reasonable care of the information so as to prevent the publication of the same information in the November 1976 issue of the Rocket under the title "Expose in Parliament — Hanky-Panky in Royal Malaysian Navy" (the third charge).

In Criminal Trial No. 15/78, he faced two charges as amended, both under section 8(1)(i) of the Act, the first with communicating such information to unauthorised persons at a luncheon given by the Selangor Graduates' Association at the Horizon Restaurant, Damansara, Kuala Lumpur, and the other with communicating the same information in a letter published in the *Far Eastern Economic Review* of September 24, 1976 under the caption "Prototype Craft may Prove Costly" (the fourth and fifth charges).

There was a joint trial. At the conclusion of the hearing which occupied a total of 15 days, the appellant was convicted on all five charges and sentenced to fines of various sums. No sentence of imprisonment was imposed.

It will make for ready understanding if reference is made to the events leading up to the prosecution, trial and conviction of the appellant. They were largely undisputed by the appellant.

Following the decision of the Government to purchase 4 FSC for the use of the Royal Malaysian Navy (RMN), the process of selecting the craft was started. This process is given very explicitly by the Secretary-General of the Ministry of Defence in his letter published in the *Far Eastern Economic Review*. In the words of the Secretary-General, it is as follows:

"First, all specifications in this tender exercise from the 10 submissions were first studied by a professional and technical evaluation committee of the Royal Malaysian Navy (RMN) appointed by the chief of the naval staff (CNS). The committee, headed by the deputy chief of the naval staff, comprised seven Senior naval officers of various specialisations. The report produced by the committee was submitted to the CNS, who in turn forwarded it along with his own comments to the chairman of the Ministry of defence's tenders board. This tenders board is a standing board appointed by and responsible to the Federal Treasury. There is no naval tenders board as stated in one of the articles.

The tenders board, after its first deliberation, appointed a working committee of two senior naval officers and four senior civilian officers, including two representatives from the Federal Treasury, to look into all aspects and provisions of the four tender submissions which were short-listed and declared acceptable by the naval professional and technical evaluation committee. The findings of this working committee were submitted to the tenders board, which made its recommendation to the Federal Treasury based on the following:

Professional and technical acceptability of all proposals; cost implication;

other relevant factors such as delivery dates, provision of training facilities, etc.

The tenders board also considered the possibility of locally-built ships and took national interests into full cognizance. The board found that the Spica M and associated weapon control system and machinery met with all the major aspects of the Malaysian naval staff requirements.

I would like to emphasise the point that in this exercise, as well as in other tender exercise of the Ministry of defence, deliberations at all levels leading to the final award of contracts have been conducted by both professional and Senior Government officials in a fully professional and responsible manner."

The defence accepted that the details of any tender exercise and of the successful outcome constitute secret official information caught by the Act. It did not contend otherwise at the appeal before us. The secret nature of the information is obvious. No issue lies as to the nature of such information. In any event, Government must surely have the undoubted right to decide what information it would keep from the public. Such information would be official secrets and would be caught by the Act.

We now know that the decision was finally taken on July 6 to buy the 4 FSC from the Swedish firm, Karlskronavarvet AB (Karls AB), and on that day the Government sent a letter of intent to Karls AB through their agents in Kuala Lumpur. We also now know that on July 14 Government sent letters of rejection to all the other nine unsuccessful tenderers.

In the meantime Encik Mokhtar Hashim, Deputy Minister of Defence, delivered a speech at the Woodlands Naval Base in Singapore announcing the purchase by the RMN of 4 FSC equipped with Exocet missiles to form the Second Strike Squadron for the Navy. This was on July 10. It is to be observed that the information revealed by the Deputy Minister and reported in the Straits Times the following day, related strictly to the decision to buy 4 FSC equipped with Exocet missiles for the RMN.That became public knowledge. It was considerably short of what the prosecution alleged the appellant to be in possession of. No information was given by the Deputy Minister as to the identities of any short-listed tenderers and of the successful tenderer, the prices and the mode of payment or the make of the fire control system or of the engines and the capability of the craft. As on this date, therefore, such information, if correct, remained confidential and secret.

Then, something happened on August 3rd bearing on this purchase but without any apparent communication to or knowledge of the appellant. Dr. Tan Chee Khoon, another Member of Parliament, received a letter sent under the *nom-de-plume* of "loyal sailor" on this decision to buy the ships. This letter was obviously written by someone with very close official connection with the Government and the Navy and with considerable technical and professional knowledge of naval affairs. It was in connection with the tender exercise leading to the decision taken for the purchase. It revealed that out of the several tenders received, four were short-listed and it disclosed the identities of the three unsuccessful tenderers and the successful tenderer. It also expressed the great dissatisfaction said to exist among naval personnel over the selection of Krals AB. The dissatisfaction was said to arise from the feeling amongst these naval personnel over the fact that the type of craft chosen was a prototype and over the unsuitability of the armament it was expected to carry. Annexed to this letter were the particulars of the four short-listed tenders with details of the type of craft, the weapon system and the price offered, together with a comparative analysis of their performances and short-comings. The letter, presumably by an individual, and not a group of persons, was clearly of the view that the craft offered by Karls AB was not suitable. Neither could the writer understand why the offers of two other tenderers to build ships proved to be serviceable and to have been currently in use not only with several other navies but also with the Royal Malaysian Navy were rejected.

It is clear that the secret information which constitutes the basis of the charges against the appellant was contained in this letter but, as has been observed, it was not communicated to the appellant. For his part, Dr. Tan Chee Khoon forwarded this letter to the Deputy Minister of Defence for action, but requested its return. He took no further action except possibly to file away the letter when it was eventually returned to him. He made no revelation of any sort and he did not have to face any charge.

Next, on August 6, an anonymous letter was sent to the Prime Minister with the same information and enclosures as in the letter to Dr. Tan Chee Khoon. It did not appear to have been signed. So there was nothing to indicate that it was from the same person as the one who designated himself the "loyal sailor". Now, this letter was carbon-copied to Dr. Tan Chee Khoon and also to the appellant. So, unless the appellant had other sources of information, this anonymous letter obviously gave him the information which he is charged with possessing and using. It was information leaked out by someone in the know, someone with the same knowledge and the access that the "loyal sailor" had.

In his statements to the police which he was required to give in the course of the police investigation into this leakage, the appellant frankly acknowledged that this letter was his first source of information. He admitted he subsequently met the writer at the latter's request but if this meeting did take place as to which we have only the word of the appellant, it was obvious that the meeting did not result in anything new being revealed, and that the letter was his first and only source of information, the personal interview merely serving to confirm the contents of the letter. It is to be observed also that this letter made a further allegation that the views of the Tenders Board were over-ridden by a committee of two naval officers and a civilian.

It is not known on what day the appellant received this letter but on August 10, that is four days after the date of the letter, the appellant wrote to the Prime Minister repeating the information contained in the anonymous letter without however alluding to the anonymous letter as the source of his information. No reply having been ventured, he wrote again to the Prime Minister in much the same vein on August 26.

In the meantime on August 21, that is, 11 days after his first letter to the Prime Minister, the appellant was the guest-speaker of the Selangor Graduates' Association at their lunch meeting at the Horizon Restaurant, Damansara, Kuala Lumpur. At this lunch, the appellant spoke on a variety of subjects and also on what he called the $166M SPICA M scandal, SPICA M being the type of craft offered by Karls AB, the successful tenderer, to be built for the RMN. In the course of that speech, he referred to the details and facts which were secret information and the revelation of which would constitute an offence. That speech became the subject-matter of the fourth charge.

In the September 10 issue of the *Far Eastern Economic Review*, two articles appeared. One was by an unknown correspondent on "Questions of a Naval Decision" and the other was by K. Das, the regular correspondent of the Review on the "Gamble of Untested Craft." Both articles touched on the same secret information as in the charges against the appellant. Neither article acknowledged that the source of the information was the speech by the appellant to the Selangor Graduates' Association. No action to date appears to have been taken by the Public Prosecutor against both writers under the Act.

These two articles however received the approbation of the appellant and the appellant then set out expressing this approbation in a letter to the editor which was given the heading "Prototype craft may prove costly," and published in the September 24 issue of the Review. While seeking to commend the Review for its investigative journalism, this letter took occasion to repeat at length the objections to the selection of the SPICA M that were expressed in the letter to the Prime Minister and in the speech to the Selangor Graduates' Association, but at greater lengths. This letter formed the subject-matter of the fifth charge.

Next, on September 29 and 30, there appeared in the *New Straits Times*, the *Berita Harian* and the *Utusan Malaysia*, three local newspapers, notices calling for tenders for the supply of guns, missiles and launchers for the 4 FSC. Anyone purporting or pretending to tender would be supplied with the details of the armaments required.

On October 4, a letter was written by the Deputy Minister of Defence on the instructions of the Prime Minister in reply to the appellant's letter of August 26. The Deputy Minister was instructed to state that

there was no truth in the allegations contained in the appellant's letter.

The November issue of the Rocket which is the political publication of the Democratic Action Party (DAP), a political party of which the appellant was at all relevant times and still is the Secretary-General, printed an article giving the same details of the purchase, the objections to the purchase and to the mode of selection and also re-producing the speeches in Parliament and the questions asked by the appellant on October 25 and November 1 and 2. The article was headed "Exposé in Parliament — Hanky-Panky in R.M.N." This article constituted the substance of the third charge.

On June 21, 1977 and again on June 30, 1977, and also on March 27, 1978, the appellant was interviewed by Mr. Cornelius, a Deputy Superintendent of Police, and asked for the source of the secret information leaked out to him. He steadfastly refused, on the grounds both of confidentiality and Parliamentary privilege.

The relevant provisions of the Official Secrets Act, Act 88, under which the charges against the appellant were laid are as follows:

"S. 8(1) If any person having in his possession or control any secret official code word, countersign or password, or any article, document or information which —

....

(c) has been made or obtained in contravention of this Act;

....

does any of the following —

(i) communicate directly or indirectly any such information or thing to any foreign country other than any foreign country to whom he is duly authorised to communicate it, or any person other than a person to whom he is duly authorised to communicate it or to whom it is his duty to communicate it; or

....

(iv) fails to take reasonable care of, or so conducts himself as to endanger the safety or secrecy of, any such information or thing,

he shall be guilty of an offence punishable with imprisonment not exceeding seven years or a fine not exceeding ten thousand dollars, or both such imprisonment and fine.

(2) If any person receives any secret official code word, countersign or password, or any article, document or information knowing, or having reasonable ground to believe, at the time when he receives it, that the code word, countersign, password, article, document or information is communicated to him in contravention of this Act, he shall, unless he proves that the communication to him of the code word, countersign, password, article, document or information was contrary to his desire, be guilty of an offence punishable with imprisonment not exceeding seven years or a fine not exceeding ten thousand dollars or both such imprisonment and fine.

....

S. 11. (1) If any person who has in his power any information relating to an offence or suspected offence under this Act fails

(a) to give, on demand, such information; or

(b) to attend at such reasonable time and place to give such information,

when required to do so by —

(aa) any police officer above the rank of Inspector; or

(bb) any member of the armed forces employed on guard, sentry, patrol or other similar duty,

he shall be guilty of an offence punishable with imprisonment not exceeding three years or a fine not exceeding five thousand dollars or both such imprisonment and fine."

On a proper construction, for the purposes of this appeal, any person to whom secret official information was communicated in contravention of the Act, in other words, a person who is not a person being in lawful possession, commits by the mere fact of receipt an offence under section 8(2). And under section 11(1)(a)(aa) he is, under penalty of committing another offence, bound to reveal the source of that information when requested to do so by a police officer above the rank of Inspector. He is also bound to respect the secrecy of that information, either by not revealing it or by safeguarding it. If he communicates it, by an act of malfeasance, he commits an offence under section 8(1)(i) and if he fails to safeguard it, by an act of nonfeasance, by failing to take reasonable care as to endanger the safety or secrecy of that information, his offence is one under section 8(1)(iv).

Mr. Karpal Singh, who appeared for the appellant, if we may say so, most ably and who took every point that could be taken, first made a spirited attack on the Official Secrets Act. It was shown to be modelled on the English Act of 1911, which was said to have been conceived in hysteria when the world faced the prospects of a great war and the major countries were engaged in rearmament. It sought to make everything secret, even matters that should not be secret. It had outlived its usefulness and ought to be pensioned off. The provisions of section 8 (copied from section 2 of the English Act) were so general that anything connected with the Government could be brought within its fold. This "catch-all" nature was said to be neither fair nor purposeful. It was also said that there must be some information caught by the Act which ought to be revealed to the public to ensure good and proper government. Mr. Karpal Singh then read to the court various articles on the general dissatisfaction over the Act and drew our attention to several paragraphs of the Franks Committee Report (1972 Cmnd. 5104), see [1974] Crim. L.R. 639, which recommended the substitution of section 2 with other more specific provisions.

All this is very interesting. It also may be very arguable. The point however is not that up to the present date, the British Government has not implemented the recommendations of the Franks Committee Report and so the Official Secrets Act 1911 remains the law of England, but it is that the Official Secrets Act, Act 88, under which the appellant was charged, remains in our statute-books. And as Mars-Jones J. said in the recent trial of Aubrey, Berry and Campbell under the Official Secrets Act, 1911 in England, whatever marks of disdain derision or abuse the Act might bear, it has to be abided by unless and until it is changed by Parliament, and until then, it is still the law of the land and the case against the accused remains to be decided on the law as it stands: see the *London Times'* issue of November 14, 1978.

We agree and we would adopt the words of Megarry V.C. in *Malone* v. *Metropolitan Police Commissioner*[1] at pages 725-6.

"... it is no function of the courts to legislate in a new field. The extension of the existing laws and principles is one thing, the creation of an altogether new right is another. At times judges must, and do, legislate; but as Holmes J. once said, they do so only interstitially, and with molecular rather than molar motion: see *Southern Pacific Co.* v. *Jensen* (1917) 244 U.S. 205, 221, in a dissenting judgment. Anything beyond that

must be left for legislation. No new right in the law, fully-fledged with all the appropriate safeguards, can spring from the head of a judge deciding a particular case: only Parliament can create such a right."

And like him, we have to remember that our function is judicial, not legislative and that we ought not to use our office to legislate under the guise of exercising our judicial powers and functions. In particular, we have no power to create a right for any person to ignore the provisions of the Official Secrets Act or any other law of the land.

The next point that Mr. Karpal Singh took in arguing the appeal was that the information must have been received in contravention of the Act and the burden was on the prosecution to prove beyond reasonable doubt that this was so. He suggested that the information could have come from a variety of non-governmental sources and if so, it could not constitute the basis of the several charges faced by the appellant since it was obtained not in contravention of the Act. He instanced various possible sources and contended that until and unless the prosecution case had established beyond reasonable doubt that the relevant information did not come from such sources, it had not proved its case against the appellant. Such sources were said to be the tenderers and those connected with the successful tenderer. He did not suggest the official or government members concerned in the decision to buy the required boats as any communication from such persons would be in contravention of the Act, but he seriously suggested that the leak was possibly from some such non-governmental source which would take the case outside the operation of the Act, and which the prosecution must eliminate as possible sources before a *prima facie* case could be said to have been established.

We hope we will not be thought discourteous to counsel if we say that we are not greatly enamoured with this argument, even though it appeared to be the main point in the appeal and he had laboured so considerably over it. Apart from considerations of the burden on the prosecution in any criminal case to establish a case against the accused not beyond absolute doubt but only beyond reasonable doubt and the onus of proof to establish the source of the information, there is no truth in the suggestion that the appellant derived his information from non-government or non-secret sources. The immense difficulty, nay, the impracticability in tracing all the tenderers and ascertaining from them whether they were successful or not, and finding out by a process of elimination the short-listed tenderers, and the absence of any credible reason for the successful tenderer to venture information of the details of its tender must be clearly seen to be the short answer to the suggestion. But the clearest answer lies in the statements of the appellant himself to the police. No question arose over the admissibility of what the appellant said in these statements: Section 21 Official Secrets Act. In them, he clearly and unequivocably stated that his source, in fact his only source, was the anonymous letter which he said he subsequently found out was written by Khamis. It is, in our view, entirely reasonable to infer that Khamis was not someone connected with the unsuccessful tenderers as he would then not have the knowledge to complain over the unsuitability of Karls AB's tender or with Karls AB since he would then have no cause to complain. If he was someone in an official position who was entrusted with the information, it would be an offence under the Act to disclose it or for an unauthorised person to receive it as it would be information made in contravention of the Act. If he was not, but he had derived his information directly or indirectly from such a source, the information would still have been obtained in contravention of the Act and the chain of communication to the appellant via Khamis and any other intermediate channels must necessarily have the effect of retaining the stamp of secrecy on the information, bringing it within the ambit of the Act. We therefore agree respectfully with the learned trial judge that the information in the charges was obtained in contravention of the Act.

Mr. Karpal Singh also suggested that the appellant was under duty, as a Member of Parliament and particularly as the Leader of the Opposition, to disclose such information, especially where it concerns the proper defence of the country and, in the allegation of a small unofficial committee of three over-riding the decision of the appointed authority, a scandal. We would venture the opinion that when the appellant wrote to the Prime Minister on August 10 disclosing the information which he had, (even though it was apparent to him that the Prime Minister had the same information in that anonymous letter of August 6), he had done his duty and we very much doubt that if he had stopped there, as Dr. Tan Chee Khoon did, he would have to face any prosecution over the matter. But when he went beyond that, under the guise of impatience over the delay in any reply from the Prime Minister, he purported to contend that his duty as a Member of Parliament and the Leader of the Opposition enabled him to over-ride the provisions of the law. This, in our considered view, could not be. As was said on another, perhaps a more historic occasion and to a more important personage, be you never so high, you are not above the law. It is but stating the most obvious to any that one's plain duty is to obey the law. Parliamentary privileges may exempt the appellant from the laws of defamation, so long as the libellous words were uttered within the walls of Parliament, but as he well knows, will not save a member from an action for damages if repeated outside the House. We do not consider, since it does not arise for consideration and we do not have the benefit of submissions, whether any speech in Parliament revealing official secrets would be caught by the Act, but clearly the duty of the appellant as a parliamentarian does not include the right to disclose or make available for disclosure official secret information outside the walls of the House to the public at large, whatever his motives might be.

The offences in the charges have therefore been clearly committed. What happened in this case proved what we teach in schools; it proved what we teach in colleges; it proved everything we have been trying to get across — that no man is above the law.

On the question of sentences, the law provides for a term of imprisonment. The decision of the learned trial judge is contained in a note made by him and which reads as follows:

"*Court:*
Submission by Counsel for defence — drawing court attention to certain mitigating factors. Taken into consideration, also the submission made by prosecution. Ignorance of the law — claimed by defence cannot be accepted. However, I do appreciate that as Leader of Opposition he had a role to play but he is not however privileged to do what he did especially to make extensive disclosures of the information. In any event — I feel that custodial sentence does not seem appropriate. Suffice if fine is imposed.
I convict the Accused on all charges.
1st charge: Fine $5,000 i.d. one year's imprisonment
2nd charge: $1,000 i.d. 2 months
3rd charge, 4th & 5th charges — $3,000 each — i.d. 9 months' imprisonment each."

The Public Prosecutor filed a cross-appeal on the sentences contending that they were inadequate. But all that was urged on this court was that the offences were of a serious nature and this court was asked to impose such sentences as it deemed fit and proper.

With respect, this court agrees after a full consideration of the record and of what was said by the learned trial judge and by counsel before it at the appeal, with the decision that no sentence of imprisonment should be made. It notes, however, that no reasoning has been advanced for the amounts of the fines imposed.

It is correct that where the offence under the Official Secrets Act is of a very serious nature, such as for example, the offence of selling official secrets vital to the defence of the country to the enemy, for improper and especially for corrupt motives, the sentence should be a long term of imprisonment, *R.* v. *Blake*,[2] but it is also true that where the offence falls short of a custodial sentence, the fine imposed should reflect the seriousness or otherwise of the offence, *Rex* v. *Crisp and Homewood*.[3] On this basis, we now proceed to examine the validity of the appeal and cross-appeal against the fines.

We do not hide from ourselves the fact that the details of the fire control system and of the engines installed in and the capability of the craft are of possible utility to an enemy which seeks to destroy our naval defence and if such information had tended to endanger or had the effect of imperilling the security of the country, we would have interfered by substituting a sentence of imprisonment for any fine that might have been imposed. But one has to be realistic and see the case in its correct perspective and in the context of prevailing conditions. We could not but wonder whether the details provided in calling for tenders for the guns, missiles and launchers, available to anyone who applied for a tender form, had not largely removed the veil of secrecy from the ships' armaments. Also no one has suggested in any way that the information in the charges was useful to such enemies as this country has at the moment or in the foreseeable future. Neither has anyone submitted that the real intention or the effect of such revelation was to benefit the enemy or endanger the security of the country. This is particularly true of the disclosure of the tender exercise and the financial provisions of the final contract. The Government has certainly the right to classify all this information as secret, the disclosure and utilisation of which would bring down the sanction of the law, but it must be seen that the effect of the breaches of the Official Secrets Act was to cause the Government to answer that there was no scandal in the evaluation of the various tenders and the selection of Karls AB as the successful tenderer and that the suspicion of the alleged scandal was based on a sub-stratum of plausible information which we should perhaps say, having inspected and read the secret documents produced at the trial relating to the decision to buy the craft in question, appears to have no truth in it. It must be seen therefore that the motive of the appellant, unfounded in law or in fact and wrongly thought to be based on parliamentary duty and privilege, was to expose a suspected scandal and to avoid, if true, the unfortunate and costly mistake of providing unsuitable craft for the RMN. No one has suggested that the appellant stood to gain in a material sense from what he did. True, he did derive some political capital from it all, but he would be less than human if he did not see the effect to his public standing from his disclosure, but the trial judge himself expressed his appreciation and acceptance of the fact that the appellant did what he did as the Leader of the Opposition. He did not however give expression to his appreciation.

In these circumstances, this court is moved to reconsider the amounts of the fines imposed.

On the first charge, there is no suggestion by the prosecution that the appellant actively sought out the information. His evidence that it was volunteered to him remained unchallenged, just as it was volunteered to Dr. Tan Chee Khoon, who, as was observed, had not been charged. We would therefore reduce the fine from $5,000 to $1,500.

On the second charge, the appellant had his code of ethics, just as many a newspaperman had who found himself in the dock under the Official Secrets Act, for not revealing the source of his information but however much the Government might like to plug the leak, it would not appear that if the source was an anonymous letter, he had much to reveal. Khamis was, in the appellant's evidence, such a vague figure that the learned judge was moved to disbelieve his existence. If he existed at all, the appellant would have failed to disclose. In these circumstances, we do not think we ought to vary the fine of $1,000.

The fourth charge relates to the first disclosure of the secret information. The offence was clearly committed but it arose from a mistaken sense of duty and was not for a corrupt purpose or for financial gain. It is only right and proper to bear this in mind when determining the amount of the fine. We think that in all the circumstances, a fine of $1,500 would fit the offence and we therefore vary the fine to this amount. For the same reasons, we reduce the fine on the fifth charge to the same figure.

The third charge, that of allowing the publication in the Rocket, was the latest in point of time. What harm was done by making it available had already been done. The fine of $3,000 will therefore be reduced to $1,000.

The appeal against convictions is dismissed as is the cross-appeal by the prosecution against sentence. The appeal against sentence is allowed to the extent indicated above.

Appeal and cross-appeal dismissed.

Solicitors: *Karpal Singh & Co.*